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S.B. CIVIL MISC. APPEAL NO.1329/2006.
(Gordhan & Ors. Vs. Baldev Singh & Ors.)

Date of Order :: 13.09.2006.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. G.J. Gupta, for the appellants.

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The claimants, parents, wife and daughter of the deceased Sahib Ram (25 years), have submitted this appeal seeking enhancement over the amount of Rs.4,54,000/- awarded by the Tribunal as compensation for the accidental death of the said Sahib Ram.

It was submitted before the Tribunal for the purpose of quantification of compensation that the deceased was engaged on a tractor of the non-applicant No.4 Kalu Ram earning Rs.3,000/- per month from the said job and that in the pastime he was also engaging himself in agriculture work earning further Rs.2,000/- per month. The Tribunal has taken note of the entire evidence produced by the applicants including a service agreement (Ex. D1/1) got produced from Kalu Ram who has appeared as NAW-4 and on that basis assessed the monthly income of the deceased at Rs.3,000/- and observed that engagement of the deceased on any other work was not established by evidence. The Tribunal has observed thus:

> "उपरोक्त साक्ष्य के विवेचन से यह तथ्य प्रमाणित है कि प्रार्थी पक्ष की ओर से ट्रेक्टर चालक का कार्य करने के अलावा मृतक द्वारा अन्य कोई कार्य किया जाना साक्ष्य के द्वारा प्रमाणित नहीं है। ऐसी सूरत में मृतक की आय 3000/- रूपये प्रतिमाह होना प्रमाणित है।"

In view of the age of the deceased at 25 years and the age of his wife at 22 years and a minor child of one year, the Tribunal has considered it appropriate to apply multiplier of 18 to a multiplicand of Rs.24,000/- assessed on the basis of annual income of the deceased at Rs.36,000/- after deducting one-third therefrom. In this manner, the Tribunal has assessed the pecuniary loss at Rs.4,32,000/- and further allowed Rs.20,000/- towards consortium and Rs.2,000/- towards funeral expenses. The Tribunal has also allowed interest @ 9% per annum from the date of filing of the claim application.

Learned counsel Mr. G.J. Gupta appearing for the appellants strenuously contended that the award falls too short of just compensation inasmuch as the Tribunal has not considered agricultural income earned by the deceased and the future prospects of growth in the earnings of the deceased. Learned counsel further submitted that the amount of Rs.20,000/- awarded towards non-pecuniary loss stands on much lower side particularly in view of the fact that the wife of deceased has suffered widowhood in her young age of 22 years

and the infant has last her father in about one year of age. The submissions are not well founded.

As noticed hereinabove, the Tribunal has considered the entire evidence placed on record and has taken the income of the deceased at Rs.3,000/- per month while being engaged on a tractor of NAW-4 Kalu Ram and has specifically observed that there was no evidence available in relation to the deceased being engaged any other work. The assessment of the monthly income of the deceased is based on proper appreciation of evidence and in the absence of any cogent proof available on record, it cannot be said that the deceased was earning further Rs.2,000/- by engaging himself in agriculture. The submission about future prospects does not fit in the fact situation of the present case as it has not been shown that the deceased was engaged in any settled business or job so as to provide a reasonable basis for considering any enhancement for the purpose of average income of the deceased.

In the overall circumstances of the case, the Tribunal not only adopted the maximum figure towards income of the deceased but also applied maximum multiplier of 18 and awarded reasonably higher amount towards pecuniary loss.

So far the question of awarding of amount towards non-pecuniary loss is concerned, the Tribunal has awarded a

sum of Rs.20,000/- and in the overall analysis particularly with reference to the higher side award on pecuniary loss, it cannot be said that the amount awarded towards non-pecuniary loss is too low or inadequate. Moreover, the Tribunal has awarded 9% interest per annum from the date of filing of claim application that too stands higher than reasonable.

In the ultimate analysis, the award made by the Tribunal in the sum of Rs. 4,54,000/- with interest at the rate of 9% per annum from the date of filing of claim application remains higher than that of just compensation ruling out any scope for enhancement.

The appeal fails and is dismissed summarily.

(DINESH MAHESHWARI), J.

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